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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
LCI Petition for Declaratory	)	CC Docket No. 98-5
Ruling Concerning Bell Operating	)	
Company Entry into In-Region	)	
Long Distance Markets	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS
CORPORATION

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Dated: March 23, 1998

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), hereby submits comments in response to LCI International Telecom Corp.'s (LCI's) Petition for Declaratory Ruling Concerning Bell Operating Company Entry into In-Region Long Distance Markets ("LCI Petition").[1] MCI commends LCI for taking an important step in initiating a debate about a structural solution to problems that have emerged with implementation of the Telecommunications Act of 1996 (the Act")[2] and that current regulatory approaches have yet to resolve. As LCI correctly recognizes, for competition to flourish, new entrants must have effective access to network elements, on both a combined and individual basis.

I. INTRODUCTION AND SUMMARY

Citing the absence of viable local competition in the marketplace, LCI proposes as a

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[1] Public Notice DA 98-130 (released Jan. 26, 1998).

[2] See 47 U.S.C. §§ 251, 252, 271 272.

potential remedy, a partial structural solution that it believes will spur the development of competition. In essence, LCI recommends that the Federal Communications Commission ("Commission") give the Regional Bell Operating Companies ("RBOCs") the option to establish two subsidiaries -- "NetCo" and "ServeCo" -- with the RBOC acting as the holding company ("HoldCo") in order to secure the RBOC's entry into the in-region long distance marketplace.

According to LCI's proposal, the NetCo subsidiary, wholly-owned by HoldCo, would own and operate the local exchange network. NetCo would provide retail local and intraLATA toll services for a five-year transitional period to the RBOC's existing customer base, after which, NetCo would become a "carrier's carrier," and would then provide interconnection, unbundled network elements ("UNEs"), exchange access and wholesale local exchange services for resale to competitive local exchange carriers ("CLECs"). Further, NetCo would be required to provide nondiscriminatory operations support systems ("OSS") to enable all CLECs to obtain these offerings, including the RBOC's partially owned CLEC, ServeCo. LCI further proposes that following the five-year transition period, state regulators could order balloting and allocation in order to make sure that customers are fairly informed of their right to change providers and CLECs have a fair opportunity to compete for local service business. However, during the transition period, NetCo would be prohibited from engaging in retail marketing for local service to its embedded customer base or to any other potential customers.

The ServeCo subsidiary would serve as the retail arm and be treated as a CLEC for regulatory purposes. HoldCo would retain a 60% controlling interest in ServeCo, the other 40% would be held by public shareholders. ServeCo would be permitted to resell local service and to offer interconnection services to other carriers. It would also be permitted, like any other CLEC, to build or buy network facilities. Moreover, ServeCo, like its CLEC competitors, would be eligible for universal service support for serving retail customers in designated high cost areas. While ServeCo could offer in-region interLATA services, during the five year transition, NetCo's existing customers would not be able to obtain interLATA services from ServeCo. Finally, according to the proposal, ServeCo would be treated as the Section 272 affiliate of the RBOC under the Act.

MCI believes that LCI's proposal represents a good, and much needed, first step in reassessing achievement of the goals in the Act and advancing the growth of local competition. Indeed, a structural solution may be an important way to expedite the advancement of local competition. However, MCI has concerns about certain aspects of LCI's proposal. MCI believes that any structural separation must be more complete, and differently designed, in order to fully and adequately address the RBOCs' anti-competitive incentives and behavior that now exist as CLECs attempt to enter the local marketplace.

II. ADDITIONAL STEPS ARE NEEDED TO BLOCK THE RBOCs' INCENTIVES TO DISCRIMINATE AGAINST CLECS

LCI's proposal does not adequately address the lack of incentives the RBOCs or, for that matter, other ILECs, to cooperate as facilities-based new entrants seek to enter the local market. While the RBOCs account for the provision of service to approximately 80% of the local market, GTE and other incumbent local exchange carriers (ILECs) engage in similar types of anticompetitive behavior. Contrary to LCI's contention,[3] its proposed partial structural separation of the RBOCs into retail affiliates and wholesale network operations will likely not

[3] LCI Petition at 3.

shift these incentives. LCI's proposal will allow this behavior to continue as demonstrated in the retail/wholesale separation plans already designed by two ILECs. Without more, LCI's proposal would permit perpetuation of the disadvantages now confronted by CLECs. While LCI's proposal for separation goes further than Rochester Telephone Corporation's and Southern New England Telephone Company's (SNET) plans in separating the retail and wholesale operations, we believe that LCI's proposal fails to eliminate the RBOCs' incentives to engage in anticompetitive behavior in order to retain their monopoly positions and profits.[4]

MCI encourages the Commission to take steps necessary to eliminate the current obstacles to facilities-based local competition. To that end, MCI believes that to eradicate the inherent conflicts of interest that remain in LCI's proposal, complete divestiture of the subsidiary is critical. Moreover, sections 271 and 272 of the Act would have to apply to make this workable. HoldCo's ownership of NetCo and partial ownership of ServeCo would present conflicting interests in both its network wholesale and retail local exchange operations and thus, preserve the incentives and ability to discriminate. Even if ServeCo were completely divested from NetCo, we believe this conflict remains, because NetCo would provide both UNEs and exchange access under HoldCo. NetCo would be the provider of the network functions needed by new entrants to provide local service, and, for as long as five years, it could also engage in the provision of monopoly local exchange service.

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[4] SNET's plan also called for a structural separation where SNET America Inc. (SAI) would inherit SNET's current retail operations and customers and would provide all retail services in SNET's place. SAI would be comparable to ServeCo under LCI's plan. SNET would be like LCI's NetCo, becoming a wholesale provider of network services, including unbundled network elements and resale. Like NetCo, SNET would be regulated as an incumbent. Both SAI and SNET would be owned by the same holding company.

A. Parity of OSS and UNEs Must Be Established

Interestingly, by virtue of its proposal, LCI assumes that the RBOCs are more interested in obtaining approval for the provision of in-region long distance than in protecting monopoly profits from the retailing function. Assuming LCI's premise is correct and that parity will result if the RBOC's retail affiliate employs the same strategy as its CLEC competitors, we believe that a structural solution must be designed differently.[5] LCI criticizes the SNET plan, for example, for not requiring the retail company, SAI, to use the same OSS that other CLECs must use. We are not convinced that this correction proposed by the LCI plan will make a difference in the RBOCs' incentives to promote competition through improved OSS. It must be remembered that, under LCI's proposal, NetCo still retains a monopoly position in the market, a significant customer base, leases the network elements and provides the OSS functions that are necessary for the CLEC to provide competitive local service. LCI assumes that ServeCo will be given equal treatment with other CLECs and that it will opt to use the same entry strategy as other CLECs to garner market share. However, without explicit requirements for complete diversiture of ServeCo from HoldCo, these assumptions are not comforting.

Because NetCo will retain the local network facilities, ServeCo will not be a facilities-based CLEC, at least not at the outset.[6] Further, it is safe to assume that ServeCo will not look to build its own facilities during the five year transition period. Given the absence of NetCo's own

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5 LCI Petition at 29 ("If the RBOC's retail arm must purchase the same network inputs at the same rates, terms, and conditions as other CLECs, and through the same OSS systems, then those inputs will actually have to work.").

6 Id. at 20 "[ServeCo] also could build its own network, just as other CLECs may.").

facilities, and HoldCo's desire to maximize revenues and thus its incentive to promote resale, ServeCo is likely to enter the market through resale. Though still inadequate and a clear sign of the RBOCs' lack of interest in real competition, the OSS that the RBOCs are currently offering for resale functions are slightly better than the OSS they currently provide for UNEs if they provide them at all. In the short-term, therefore, ServeCo's use of NetCo's OSS presumably for resale will not necessarily result in OSS parity in the provisioning of UNEs for the other CLECs.

Further, assuming NetCo had an independent incentive to improve its OSS, NetCo still would not be inclined to sell UNEs that would be used in combination in a way that does not require the CLEC to use its own facilities -- to ServeCo or any other CLEC. As operator of the local network, NetCo, at least during the transition period, would both continue to sell UNEs to CLECs and to collect access revenues from interexchange carriers (IXCs). The basis for conflict is clear -- NetCo would not be inclined to sell UNEs to CLECs to the detriment of its ability to receive access revenues. Indeed, LCI concedes this continuing "strong incentive to discourage use of UNEs" and states only that "this problem will bear watching in the short term."[7] Moreover, after the transition period, once NetCo is providing UNEs (even assuming they are based on reasonable terms and conditions) and ServeCo is providing access service for its newly acquired customer base, depending on whether access charges remain inflated, HoldCo's 60 percent interest in ServeCo's access earnings may well outweigh its 100 percent interest in NetCo's earnings from the provision of UNEs to CLEC competitors. It is exactly the problem that the RBOCs' competitors have now-- the RBOCs' ability to continue to charge inflated prices

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[7] Id. at 33, n.40.

for access and other monopoly services versus the sale of UNEs that would reduce the amount of access charges. LCI's proposal does not remove this inherent conflict.

The RBOCs' failure to provide nondiscriminatory OSS and access to UNEs for their competitors is itself the direct outcome of the RBOCs' conflict of interest. Even under LCI's plan, these critical services would remain under NetCo's control, thus leaving NetCo with a fairly easy choice between lost profits or undertaking discriminatory behavior to preserve them.

B. Facilities-Based Competition Must Be Encouraged

As the owner and operator of the existing network facilities and collector of access charges, NetCo would necessarily be incented to promote competition only at the retail level and discourage facilities-based competition. Given that NetCo's business objective is to manage and make available network and operational support, NetCo would want to maximize the dependence of all CLECs, including ServeCo, on its facilities and minimize others' incentives to invest in competitive facilities.

As LCI concedes, its plan has "limited value as a device to encourage NetCo to reduce its UNE access rates to economic cost," given "HoldCo pressures to maximize NetCo revenues for the benefit of HoldCo shareholders."[8] Thus, continued regulation of NetCo would be necessary to prevent it from hindering the development of competing facilities networks that would eventually erode NetCo's profits.[9] Moreover, in order to maintain its monopoly, NetCo would still have incentives to deny reasonable interconnection to other network facilities providers,

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[8] LCI Petition at 34.

[9] Id. at 34, n. 41.

whether those of ServeCo or another CLEC. Regulators and the CLEC industry confront this problem now, and LCI's proposal does not resolve it.

It may well be that there is an irreducible segment of the local exchange network that will not be subject to competition in the foreseeable future, and there would be nothing wrong in realistically acknowledging that fact and resolving to confront it. As explained in Part IV, infra, however, LCI's plan cedes too much of the local exchange network to continued monopoly status, and in so doing, does not adequately deter the barriers that have been erected in the development of local competition.

C. Complete Economic Separation is Required

LCI's proposal to permit HoldCo to retain approximately 60 percent interest in ServeCo is more than sufficient to give HoldCo significant control over ServeCo's behavior.[10] Because it is not likely that this subsidiary would ever act truly independent of the parent company, LCI's proposal does not go far enough. Finally, partial public ownership of ServeCo will not necessarily ensure that ServeCo's officers will pursue the same market entry strategy as other CLECs.

Similarly, separate management for NetCo and ServeCo does little to change HoldCo's incentives. It is also inevitable that HoldCo will be incented to maximize joint profits of both of its subsidiaries. Although LCI proposes that NetCo and ServeCo be physically, operationally, and functionally separate, the companies would nevertheless have the same holding company. By establishing a parent company that will control the local exchange facilities as well as the

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[10] LCI Petition at 30.

provision of competitive retail local service, the challenge will remain for CLECs to obtain nondiscriminatory access to the local network. The incentives for anticompetitive conduct by the RBOCs would continue to be too strong and the ways to discriminate endless and hard to detect. Again, because preservation of profits is still in HoldCo's best interest, having independent directors on ServeCo's Board as "watchdogs"[11] of HoldCo's influence would do little to minimize this proble - they too wish for NetCo to favor them.

This problem is further exacerbated because one of the companies, NetCo or ServeCo, would be permitted to use HoldCo's name.[12] Regardless which company used the name, competitive advantages will follow. Customers tend to remain with the name they are most familiar with for service. It does not matter that the NetCo and ServeCo will have materially different names. Either NetCo or ServeCo would have the ability to take advantage of the HoldCo's brand name -- in certain instances, a respected and well-known name. HoldCo's name is the name that customers will identify as their incumbent provider.

Earning market share from the entrenched incumbent provider is a slow process. If NetCo uses HoldCo's name, in many instances, customers will simply stay with NetCo, at least during the five-year transition period, making it just as hard for ServeCo to attract customers as other CLECs during that lengthy period. If ServeCo uses the name, customers will be more likely to switch to ServeCo from NetCo because they will feel like they are not really switching to a new provider but will continue taking service from their incumbent LEC. By contrast,

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11 Id.

12 Id. at 21.

CLECs start with nothing and have to earn their customers one at a time by convincing a customer that she/ he will receive good quality service at appealing prices.

D. Balloting and Allocation Should Be Accompanied By Strong Safeguards

LCI criticizes the Rochester plan for failing to include balloting and allocation as a means of diffusing NetCo's customer base.[13] Arguably, balloting would be an effective tool for promoting greater consumer choice and giving CLECs a fair opportunity to compete. However, balloting must not occur until OSS systems for CLECs are at parity with the RBOCs' and until all steps NetCo must take to ensure that the requirements of section 251 have been fully implemented such that differences in service are not based on anticompetitive behavior. This is no small feat.

Given the lack of incentives for RBOCs to improve their OSS under LCI's proposal and the practical inability of the Commission and the states to regulate the RBOCs to act contrary to their economic incentives, it is entirely possible that OSS systems will not be improved to a point where complete parity for CLECs is achieved even during the five-year transition period. For example, SNET's OSS systems have yet to be made workable for UNEs, thus requiring a postponement of the balloting ordered by the Connecticut Department of Public Utilities ("DPUC")[14] Accordingly, before balloting can be effective, CLECs must have a fair shot at providing good quality service that allows them to effectively compete for customers. The

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13 LCI Petition at 15.

14 See DPUC Investigation of the Southern New England Telephone Company Affiliate Matters Associated with the Implementation of the Public Act 94-83, Docket No. 94-10-05 - Reopening (December 22, 1997).

continuing need for regulatory solutions to so many problems in the local market is another indication that more aggressive measures are needed to alter RBOC incentives in fundamental ways that are not contemplated in the LCI proposal.

E. Any Divestiture Plan Must Address All Anti-Competitive Issues

Although LCI criticizes various ILEC restructuring proposals and attempts to distinguish its own plan, similar anticompetitive issues remain. For example, one of the dangers posed by the SNET reorganization is that it allows SNET, through SAI, to undermine its obligation under section 251(c)(4) to offer discounted wholesale local service for resale. Because SNET itself would no longer be providing retail local service, the DPUC concluded that the resale duties of section 251(c)(4)(A) would no longer apply to it, while section 251 would not be applicable at all to SAI, since it is not an ILEC.[15]

Similarly, since ServeCo would be the retailer and NetCo the wholesaler of local service, NetCo might be able to avoid its section 251(c)(4) obligations in the same manner. Hopefully, other state commissions will be stricter in this regard than the DPUC, but the LCI plan raises the possibility that such abuses will be allowed. Moreover, the "Seven Minimums" outlined in the LCI petition[16] do not address this issue.

LCI's proposal raises other potential competitive risks as well. As discussed above, MCI believes that the LCI plan would generate incentives to keep ServeCo a non-facilities-based

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[15] See DPUC Investigation of the Southern New England Telephone Company Affiliate Matters Associated with the Implementation of the Public Act 94-83, Docket No. 94-10-05 (June 25, 1997).

[16] See LCI Petition at 29-32.

reseller of local services. If MCI is incorrect about that, however, LCI's proposal could have equally negative consequences for competition. Under the proposal, ServeCo would be permitted to construct its own facilities, which it could deploy in coordination with NetCo, in ways that no other CLEC can match. By combining UNEs from NetCo with its own new facilities, ServeCo could provide new local services not available from NetCo, as well as unique packages of local and long distance services. Coordination between NetCo and ServeCo would allow them to migrate certain favored customers to ServeCo, which could provide state-of-the-art features not offered to others, while mass market local customers and other CLECs would continue to be served by NetCo. Meanwhile, NetCo, the only HoldCo provider of local exchange facilities and services subject to the RBOC obligations under Section 251, would have no incentive to improve its monopoly facilities, since, as LCI admits, there would be no facilities-based local competition under its proposal in the foreseeable future. Other CLECs -- and, during the transition, mass market local customers -- would be stuck with the increasingly limited offerings available from NetCo, which could degrade its facilities while continuing to extract monopoly charges for their use.

It is difficult to predict whether this scenario will occur, and MCI assumes that, in fact, ServeCo will be only a reseller of local services. It is a matter of some concern, however, that not only would the LCI proposal allow such strategies -- which underlie the ILEC-CLEC proposals -- but it would also seem to invite them, since: (1) NetCo customers are supposed to migrate to ServeCo (and other CLECs) during the transition; (2) ServeCo will be allowed to build its own facilities; and (3) ServeCo is the only HoldCo subsidiary that will be allowed to provide new local services. Thus, if NetCo and ServeCo, contrary to MCI's assumption, behave in ways contemplated by the proposal, the results could be anticompetitive as well.

Furthermore, to the extent that ServeCo does not build its own facilities and instead uses UNEs provided by NetCo, it might need UNEs that other CLECs that have their own facilities do not need. Such elements that could be tailored for ServeCo's use, could ostensibly be offered on a nondiscriminatory basis, but since only ServeCo would want them, there would be no practical check on NetCo's preferential development or pricing of UNEs or other discrimination in favor of ServeCo in the provision of such UNEs. On the other hand, to the extent that ServeCo was to build and use its own facilities, such use could mask any failure to impute the cost of any facilities and services that it continued to obtain from NetCo. Nominally, the inputs obtained from NetCo could be fully reflected in ServeCo's retail prices, while the economic value of ServeCo's own inputs were not fully reflected in those prices. The effect would be the same as if the NetCo inputs were not properly imputed, but since it would be difficult to measure the actual market value of ServeCo's own inputs, the use of such inputs could prevent an accurate assessment of ServeCo's imputation of NetCo's inputs. Thus, LCI's proposal, under a variety of circumstances, could create an environment in which the RBOCs could frustrate the growth of local competition as they could under their ILEC-CLEC proposals.

III. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO WAIVE SECTION 271 BY CREATING A PRESUMPTION OF COMPLIANCE

LCI proposes that if "an RBOC creates a ServeCo satisfying the key elements of separation and independence set forth here, the RBOC will receive a rebuttable presumption that it has met the competitive checklist and public interest test of Section 271."[17] One problem with

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[17] LCI Petition at 24.

this conclusion, however, is that the Commission does not have the authority to waive the Section 271 requirements, which effectively would be the result of a rebuttable presumption of compliance. LCI has not provided the basis for any such authority in its proposal. Nothing in the LCI proposal, other than generalized statements about the RBOCs' incentives,[18] demonstrates a link between the partial structural separation described in LCI's petition and presumed compliance with the requirements of Section 271.

The pivotal language of subsection (d)(3) of Section 271 -- "[the Commission shall not approve the authorization requested ... unless it finds" -- directs the Commission to deny an application under Section 271 when an RBOC is unable to make the affirmative findings detailed in subparagraphs (d)(3)(A)-(C). Indeed, the FCC has stated that it "must make certain that the BOCs have taken real, significant, and irreversible steps to open their markets,"[19] not just that they might have the incentive to allow local competition to develop.

A closer review of the competitive checklist highlights the difficulty of relying on LCI's suggested "rebuttable" presumption. For example, as discussed above in Section I(A), ServeCo's use of NetCo's OSS will not give NetCo any greater motivation to improve its OSS for anything other than resale. Thus, there is no reason to expect that the partial separation

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18 LCI Petition at 24-26. LCI seems somewhat ambivalent on this point, conceding that the RBOC "also must actually be providing or generally offering each checklist item in order to meet Section 271" and "the ultimate burden of proof still rests with the RBOCs." Id. at 24, n. 30.

19 Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 at p.18 (rel. August 19, 1997).

proposed by LCI would lead to the nondiscriminatory provision of OSS for UNEs by NetCo, as required by checklist items. Second, LCI claims that under its plan, RBOCs "will finally have an incentive to make available the UNEs needed to provide local service, in the forms needed by competing service providers."[20] In reality, because NetCo controls both network access and UNEs, the incentives would lead to just the opposite result. NetCo will have no incentive to sell UNEs because it will not want to give up interstate access revenues or give up monopoly profits from other monopoly services whose retail rates are set far above economic cost. Moreover, NetCo's incentives are the same that the BOCs currently have. NetCo has every incentive to make it hard for facilities-based CLECs to use their own switching with NetCo loops by requiring prohibitively high NRCs and using dysfunctional OSS. Thus, the LCI plan is not likely to lead to satisfaction of specific checklist items.

Finally, since the partial separation proposed by LCI would not bring about actual compliance with section 271 requirements, the presumption of such compliance would, in effect, amount to a grant of forbearance from the application of section 271. The forbearance provision, Section 10 of the Act, however, explicitly exempts section 271 from the Commission's forbearance authority, stating that "[except as provided in Section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 ... until it determines that those requirements have been fully implemented."[21] Allowing an RBOC to use the partial structural separation in LCI's plan as a "rebuttable presumption" that it has met the requirements

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[20] LCI Petition at 32.

[21] 47 U.S.C. § 160(d).

in section 271 would effectively circumvent the express limitation on the Commission's forbearance authority in Section 10.

IV. A MORE COMPLETE STRUCTURAL SOLUTION MAY BE A MORE EFFECTIVE ALTERNATIVE TO ACHIEVE LOCAL COMPETITION

As we have noted earlier, MCI believes that LCI's proposal takes a step in the right direction, but does not sufficiently address the anti-competitive behavior affecting facilities-based new entrants. In essence, we believe that the structure that LCI has proposed will not remove the RBOCs' incentives to discriminate in the provision of services necessary for CLECs to effectively compete in the local market. That having been said, MCI is convinced that a structural approach may be a necessary and appropriate means of diluting the RBOC monopoly presence and establish an environment conducive to competition.

A. Full Divestiture is the Only Way to Cure the Problems of the Existing Marketplace

MCI has entered the battle to enter the local market and thus has experienced first-hand the anti-competitive actions taken by the incumbents. Despite numerous setbacks, MCI's commitment to entering the local market remains strong. In order for facilities-based competition to develop, however, we believe that any divestiture must be complete and must occur along the appropriate structural lines. For this reason, we suggest that a more effective alternative to LCI's proposal is to completely separate the monopoly functions, for which a competitive market structure cannot be safely predicted based on current technological wherewithal, from those functions that will be competitive in the foreseeable future.[22] As a

[22]MCI's proposal only addresses the RBOCs. MCI believes that the plan should be applicable to all ILECs as they all have monopoly control over the local loops in their operating

result, MCI believes that the monopoly functions should be housed in an entirely separate independent entity such that all CLECs can obtain them. The RBOC or its holding company should not retain any interest in the divested facilities-based wholesale provider. MCI believes that such an approach, as was similarly undertaken in the divestiture of the Bell System's long distance operations from the RBOCs' local exchange operations, may prove to be a more effective solution.

B. Only Monopoly Functions Should be Placed in a Wholesale Company

If a structural solution is to succeed, it should eliminate to the maximum extent possible all incentives for discriminatory and anti-competitive actions. MCI is convinced that the only means to ensure this result is to pursue a structural split at the correct point. While LCI has proposed an operational, or functional split at the retail/wholesale level, we believe that a much more effective ownership split should be physical -- where the local loop interconnects with the end office switch. Almost all of the functions associated with the non-loop portion of the local exchange network -- e.g., local switching, local transport and intraLATA toll services -- are more likely to be provided by competitors. To encourage continued competition of retail offerings, we suggest that the ownership of the local loop and facilities and equipment necessary to effect efficient interconnection with competitive CLECs, should be spun off into a fully independent entity, responsible only for management of the loop and these other facilities.[23]

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[23] Prior to implementation of such divestiture, careful study should be given to whether any transition period is needed to deal with facilities that can be provided by competitors but toward which new entrants, in reliance upon statutory and regulatory action, have acted in reasonable reliance on their continued availability pursuant to requirements such as Section 251

In this manner, the most monopolistic component of the telecommunications marketplace would be divested from the remainder of the local exchange network and placed under the control of a separate free-standing company that does not have ties to the RBOC. The RBOCs would therefore be in control of those portions of the local network that would presumably be subject to competition, but would no longer own the local loop. Under such a scenario, the independent wholesale loop provider would truly become a "carrier's carrier," by virtue of the fact that it would not compete at all in the downstream competitive marketplace. LCI's proposal, by contrast, would establish a structure essentially enabling the RBOC to operate in both the upstream and downstream markets; thus incentives for anti-competitive tactics -- such as making it difficult to use CLEC switching facilities with NetCo loops -- would remain.

We believe that MCI's suggested alternative is a structural solution that would more quickly drive the marketplace to facilities-based competition, mirroring the approach taken during the first divestiture of the Bell System, where long distance was spun off from local services. In 1984, the understanding was that the long distance market could be competitive, but that competition could not yet develop in any portion of local markets. In the end, a local/long distance split was the most appropriate dichotomy to enable competition to develop where possible. Now that previous regulatory initiatives have proven ineffective in ensuring competition in the local market, it may be time to divest the one remaining truly monopolistic segment of the local network -- the local loop -- from the rest of the network. Of course, even under MCI's proposal during the transfer from a local monopoly to a competitive marketplace,

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of the Act.

there would still be the need to regulate the loop, including pricing,[24] as well as some form of regulation of the RBOC for termination of traffic as well as for the provisioned network facilities where competition has not developed.

C. A Competitive Market for Local Service Would Develop Under an Appropriate Structural Model

MCI believes that loop divestiture would eliminate incentives to discriminate. While the monopoly loop provider would remain a regulated entity, over time, there would arguably be less need for regulations to govern quality of interconnection, given that the loop provider would have an incentive to interconnect as efficiently as possible with as many retailers (including switch-based competitors) as possible in order to expand its one remaining market. Under this approach, the BOCs would participate in the local exchange market, offering all local exchange and access facilities and services in competition with other CLECs. Only the local loop would be offered by the completely divested company. Following divestiture of the RBOC from its loop plant, the RBOC could be regulated as any other CLEC once competition had evolved in the local market as an adequate substitute for regulation. Regulatory requirements would still continue to be applicable to the loop company as the dominant provider of essential exchange services unless, and until, adequate substitutes for the local loop were available. This restructuring of the industry could well hasten the advent of local competition.

V. CONCLUSION

As discussed above, MCI commends LCI for taking the initiative to start the debate for

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[24] It is, of course, conceivable that technological developments will someday bring competition to the local loop. At that time, it will be possible to abandon the remaining regulatory restraints on the loop providers.

structural separation. However, we believe that the structural solution that will ultimately lead to the creation of a vibrant and competitive local market should be different from LCI's proposed approach. Our approach would shift the RBOCs' continuing incentives to engage in discriminatory behavior caused by their conflicting ownership interests and desire to ensure continued monopoly profits. Because LCI's proposal leaves competitive and monopoly segments of the local exchange network under one corporate structure, it does not eliminate these conflicts. As such, MCI believes that when the monopoly local loop is completely divested from the rest of the local network as proposed by MCI, the loop provider will be in a position to devote itself to the nondiscriminatory provision of facilities to all comers -- divested RBOCs and CLECs alike -- thus allowing true local competition to flourish.

Respectfully submitted,

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Dated: March 23, 1998

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on March 23, 1998.

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CERTIFICATE OF SERVICE

I, Mel Farrington, hereby certify that on this 23rd day of March, 1998, I served by first-class United States Mail, postage prepaid, a true copy of the foregoing Comments, upon the following:

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